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• MESSAGE •

The complete reply is being faxed again.

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36431

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bieser, et al.

Serial No.: 09/032,893

Filed: February 27, 1998

Title: HOMOGENEOUSLY BRANCHED ETHYLENE POLYMER CARPET, CARPET BACKING AND METHOD FOR MAKING SAME

§ Examiner: Juska, C.

§ Group No. 1771

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Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

REPLY TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE) MAILED JUNE 28, 2001

In response to the Notice of Improper Request for Continued Examination mailed June 28, 2001, the Applicants are treating the notice as an Office Action requiring the complete submission of the previous response. Therefore this reply is timely filed.

REMARKS

Claims 1-6 and 9-12 are pending in this application. The Applicants are replying to the Notice of Improper Request for Continued Examination as an Office Action requiring the complete submission of the previous response. The Applicants filed a Continued Prosecution Application (CPA) Request Transmittal on May 30, 2001 in response to a non-final Office Action mailed on November 30, 2000. The CPA Request Transmittal was treated as an RCE because the CPA was filed on an application that was filed on or after May 29, 2000. As such, the CPA was turned into an RCE and the RCE was incomplete since no submission was filed with it. Under MPEP § 714.03, where a reply is a bona fide attempt to advance the application to final action, but contains an

omission, the Examiner **should**, if there is insufficient time remaining, issue an Office Action setting a one-month time period to complete the reply pursuant to 37 C F R. § 1 135(c) The Applicants respectfully submit that the following is a complete response to the Office Action and that it is timely filed under MPEP § 714 03.

RESPONSE TO REJECTION UNDER 35 U.S.C. § 103 (A)

Claims 1-6 and 9-12 are rejected under 35 U.S.C 103(a) as being unpatentable over WO 93/15909 issued to Fink in view of US 5,741,594 issued to Jialanella. The Examiner states.

> The pending claims are rejected as being obvious over the cited Fink patent, which teaches the claimed carpet structure, in view of the cited Jialanella patent, which discloses the specific adhesive. It would have been obvious to one of ordinary skill in the art to substitute the Jialanella homogeneously branched polyethylene adhesive for the thermoplastic polyolefin adhesive disclosed by Fink Motivation to do so would be the explicitly teaching by Jialanella that said adhesive is suitable for carpet backings.

Office Action of November 30, 2000, page 4-5.

Applicants have reviewed the above references and respectfully disagree that the above references render the claimed invention obvious. Applicants' reasons are stated as follows

A. Applicable Law.

To reject claims of an application under 35 U.S.C § 103(a), an examiner has the burden of establishing an unrebutted prima facie case of obviousness. See In re Deuel, 51 F.3d 1552, 1557, 34 U S.P Q.2d 1210, 1214 (Fed. Cir 1995) In the absence of a proper prima facie case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. See In re Oetiker, 977 F 2d 1443, 1445, 24 U S.P Q 2d 1443, 1444 (Fed Cir 1992) One important indication of non-obviousness is the "teaching away" from the claimed invention by the prior art or by experts in the art at or after the time the invention was made See U S. v Adams, 383 US 39 (1966)

Teaching away is the antithesis of the art's suggesting that the person of ordinary skill go in the claimed direction Teaching away from the art is a per se demonstration of lack of *prima facie* obviousness. See In re Dow Chemical Co , 837 F 2d 469, 5 USPQ2d 1529 (Fed. Cir 1988); In re

Fine, 837 F 2d 1071, 5 UPSQ2d 1596 (Fed. Cir 1988), In re Nielson, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987)

B. Application of the Law.

1. Claims 1-6 and 9-12 are not rendered obvious by *Fink and Jialanella* because Fink teaches away from using polyethylene as an adhesive backing.

Claims 1-6 and 9-12 are directed to a carpet including (a) a primary backing, (b) a plurality of fibers attached to the primary backing, (c) an adhesive backing, (d) an optional secondary backing adjacent to the adhesive backing, wherein the adhesive backing is comprised of at least one homogeneously branched ethylene polymer characterized as having a short chain branching index (SCBDI) of greater than or equal to 50% and is in intimate contact with the primary backing and has substantially penetrated and substantially consolidated fibers.

Fink discloses a carpet including a primary backing having tufts of synthetic carpet fibers protruding from a top surface and optionally, a secondary backing with an extruded sheet of an isotactic polyolefin polymer between and integrally fused to a bottom surface of the primary backing and an upper surface of the secondary backing. It provides a list of compositions that may or may not be suitable for use in the extruded sheet See *Fink*, Table A, page 20. One of the properties listed is the expected bonding strength with polypropylene. Four groups of materials were investigated. polypropylene, polyethylene, polybutylene, and elastomeric alloy TPE's All polyethylene examples have poor bond strength, except for polyethylene ionomer. According to *Fink*, polyethylene (other than its ionomers) is not suitable for adhesively bonding tufted carpet to the primary backing. Given the uniform unacceptability of polyethylene polymers in *Fink's* disclosure, one of ordinary skill in the art would not experiment with additional polyethylene polymers for use in extrusion backed carpet applications. **Therefore, *Fink* does not teach or suggest the use of a homogeneously branched ethylene polymer as the extruded sheet, but actually teaches away from using homogeneously branched ethylene polymers as the extruded sheet.** Because *Fink* teaches away from using ethylene polymers, it cannot be properly combined with *Jialanella*

requirements is entitled to a patent. The Applicants respectfully submit that the claimed invention is non-obvious and thus patentable.

CONCLUSION

The Applicants have addressed all of the Examiner's rejections and believe that the claims are now in condition for allowance and respectfully request that the Examiner grant such an action. If any questions or issues remain in the resolution of which the Examiner feels will be advanced by a conference with the Applicants' attorney, the Examiner is invited to contact the attorney at the number noted below.

No fee is believed to be required for this submission. Should there be any additional fees required, please charge such additional fees to Deposit Account 10-0447, reference 43225.41824BUSP(BAI).

Respectfully submitted,

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Date: 7/25/2001

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PATENT ATTORNEY DOCKET NO.: 43225.41324BUSP

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Title: HOMOGENEOUSLY BRANCHED ETHYLENE POLYMER CARPET, CARPET BACKING AND METHOD FOR MAKING SAME

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